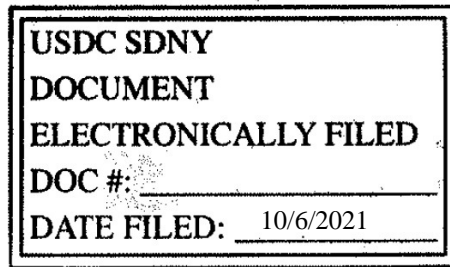


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
NICOLE ARCH,

Plaintiff,

- against -

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----X

20-CV-2842 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

Plaintiff Nicole Arch brings this action pursuant to the Social Security Act (“the Act”), 42 U.S.C. §§ 405(g), 1383(c)(3), seeking judicial review of a final determination of the Commissioner of Social Security (“Commissioner”) denying her application for Disability Insurance Benefits (“DIB”) under the Act. On February 16, 2021, Plaintiff moved for judgment on the pleadings, seeking an order reversing the Commissioner’s determination and remanding for additional administrative proceedings. (Docs. 28–29.) On April 14, 2021, Defendant cross-moved for judgment on the pleadings, seeking affirmance of his final decision. (Docs. 31–32.) On May 11, 2021, Plaintiff filed a reply memorandum of law in support of her motion for judgment on the pleadings. (Doc. 33.)

This case was referred to Magistrate Judge Robert W. Lehrburger on December 18, 2020, for a report and recommendation on the cross-motions. (Doc. 23.) Judge Lehrburger issued his Report and Recommendation to The Honorable Vernon S. Broderick on August 3, 2021. (Doc. 34) (“Report and Recommendation” or “R&R”). Neither party filed an objection.

Before me is Judge Robert W. Lehrburger's unobjected to Report and Recommendation, which recommends that the case be remanded for further proceedings, at which the ALJ should properly consider the opinions of Plaintiff's treating physician and reconsider Plaintiff's residual functional capacity in light of the re-evaluation of the treating physician's opinions. (*See* Doc. 34.) Judge Lehrburger's R&R is thorough and detailed, and I accept its findings and recommendations and direct that this case be remanded for further proceedings consistent with the findings in the Report and Recommendation.

In reviewing a magistrate judge's report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within fourteen days of being served with a copy of the report. *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). When a party submits a timely objection, a district court reviews *de novo* the parts of the report and recommendation to which the party objected. Fed. R. Civ. P. 72(b)(3). When neither party submits an objection to a report and recommendation, or a portion thereof, a district court reviews the report and recommendation, or that portion, for clear error. *Baez v. RCO Restoration Corp.*, 20-cv-1066 (VSB) (JLC), 2021 WL 4077944, at *2 (S.D.N.Y. Sept. 8, 2021); *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

Here, the Report and Recommendation was filed on August 3, 2021. Although the Report and Recommendation explicitly provided that "the parties shall have fourteen (14) days to file written objections to this Report And Recommendation" and **"FAILURE TO FILE TIMELY OBJECTIONS WILL RESULT IN WAIVER OF OBJECTIONS AND PRECLUDE APPELLATE REVIEW,"** (R&R 32), neither party filed an objection. I therefore reviewed

Judge Lehrburger's thorough and well-reasoned Report and Recommendation for clear error and, after careful review of the record, found none. Accordingly, I adopt the Report and Recommendation in its entirety. Plaintiff's motion for judgment on the pleadings, (Doc. 28), is GRANTED, and Defendant's motion for judgment on the pleadings, (Doc. 31), is DENIED. This case is remanded for further proceedings consistent with the Report and Recommendation.

The Clerk's Office is respectfully directed to terminate the motions at Docs. 28 and 31, and to enter judgment remanding this case.

SO ORDERED.

Dated: October 6, 2021
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick", written over a horizontal line.

Vernon S. Broderick
United States District Judge